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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,521	11/03/2003	Jacques Habatjou	233773US26	1399
22850 7590 01/17/2007 OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER DOAN, ROBYN KIEU	
			ART UNIT	PAPER NUMBER
			3732	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/17/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/698,521

Applicant(s)

HABATJOU, JACQUES

Examiner

Robyn Doan

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) 12-14, 17 and 39-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 15, 16, 18-32 and 35-38 is/are rejected.
- 7) ☒ Claim(s) 33 and 34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11/3/03</u> . | 6) <input checked="" type="checkbox"/> Other: <u>Attachment A</u> . |

DETAILED ACTION

Election/Restrictions

Claims 12-14, 17, 39-58 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/23/2006.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 7, 10, 24-27, 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Callowhill et al (U.S. Pat. # 1,744,681).

With regard to claim 1, Callowhill et al discloses a case (fig. 4) comprising a base part (1) holding a product, a lid (2) covering the base part, a sealing member (12) arranged to close in a leak tight manner a space (10) containing a product, wherein the sealing member being support by a pivot incorporating a ball joint (14) so that the sealing member inherently being rotatable about at least two mutually perpendicular axes of rotation. In regard to claim 4, the case further having a cup (5) support by the

Art Unit: 3732

base part and containing the product. In regard to claim 7, the cup having a free edge (8) against which the sealing member can bear. In regard to claim 10, the lid is pivotable with respect to the base part (at 7a, fig. 4). In regard to claims 24-26, Callowhill et al discloses a base (1) having a first compartment (10) and a second compartment (see attachment A), a lid (2) coupled to the base and movable to a closed lid position, a cover (12) with a central portion (14) and a peripheral portion, the cover member being coupled to the lid via the central portion of the cover member so that said peripheral portion is pivotable about at least one axis passing through the central portion; wherein in a closed position, the peripheral portion of the cover member (12) bears against an edge of the first compartment (10) so as to seal the first compartment and the second compartment is covered by the lid (2). In regard to claims 27, 30, 31, the case having a cosmetic product in the first compartment (col. 2 line 60). In regard to claim 32, the central portion having a ball (14) joint in a receptacle.

Claims 1, 8, 9, 11, 15, 16, 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Hamilton (U.S. Pat. # 4,184,603).

With regard to claim 1, Hamilton discloses a case (figs. 3, 4) comprising a base part (10) holding a reserve of product (col. 2, line 42), a lid (18) covering the base part and a sealing member (25) arranged to close in a leak tight manner a space containing the product (col. lines 59-62), at least when the lid is closed, wherein the sealing member being supported by a pivot incorporating a ball joint (35) so that the sealing member is rotatable (see fig. 3) about at least two mutually perpendicular geometrical

Art Unit: 3732

axes of rotation. In regard to claim 8, the sealing member being arranged to bear on the base part (see fig. 3) at least when the case is closed. In regard to claim 9, the sealing element having a plate (25). In regard to claim 11, the sealing member is attached to the lid (see fig. 3). In regard to claims 15 and 16, the sealing member being movable along an axis perpendicular to the two axes and the sealing member provides an initial lift effect (see dot lines in fig. 3) to reduce a force needed to detach the sealing member from a surface against which the sealing element bears in a leak tight manner. In regard to claim 19, the pivot being supported by a support (30) element. In regard to claim 20, the sealing element having a plate (25, see fig. 3) having an asymmetrical feature. In regard to claim 21, the plate having a variation in thickness (see fig. 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3, 5, 6 and 35-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Callowhill et al.

With regard to claims 2, 3, 5, 6, 35-38, Callowhill et al discloses a case comprising all the claimed limitations in claims 1 and 24 as discussed above except for the pivot central portion having a resiliently deformable part, the cup being made of

metal and glued onto the base part. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the pivot central portion having a resiliently deformable part, the cup being made of metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. And it would also have been an obvious matter of design choice to glue the cup onto the base part, since such modification is well known in the art.

Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Callowhill et al in view of Johnson (U.S. Pat. # 1,507,117).

With regard to claim 28 and 29, Callowhill et al discloses a case comprising all the claimed limitations in claim 24 as discussed above except for the second compartment having an applicator and free of product. Johnson discloses a cosmetic container (fig. 1) comprising two compartments (50, 51), one of the compartments (51) having an applicator (powder puff col. 2, line 84) and one compartment (50) being free of product. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the applicator as taught by Johnson into the compartment of Callowhill et al in order to apply cosmetic to the skin of the user.

Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Callowhill et al in view of Dreschler et al (U.S. Pat. # 6,071,503).

With regard to claims 22 and 23, Callowhill et al discloses a case comprising all the claimed limitations in claim 1 as discussed above except for the product being

Art Unit: 3732

isododecane. Dreschler et al shows a cosmetic composition comprising isododecane (col. 30, line 30). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the isododecane solvent as taught by Dreschler et al into the cosmetic product of Callowhill et al for the intended use purpose.

Claims 33, 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Baker and Beckertgis are cited to show the state of the art with respect to a case having a sealing member.

The drawings filed 11/3/03 have been approved by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'R. Doan', with a stylized, cursive script.

Robyn Doan
Examiner
Art Unit 3732

Attachment A

Jan. 21, 1930.

P. J. CALLOWHILL ET AL

1,744,681

LOOSE POWDER CONTAINER

Filed July 2, 1928

2 Sheets-Sheet 2

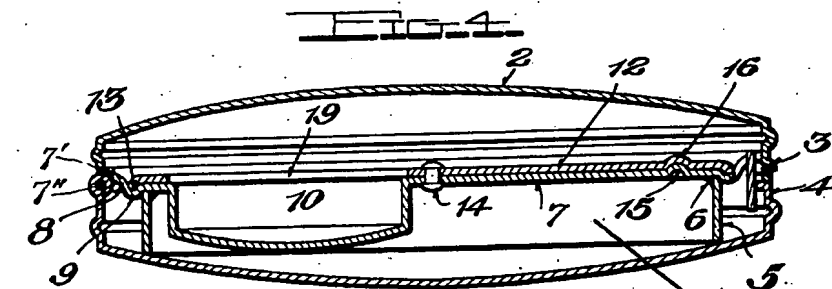
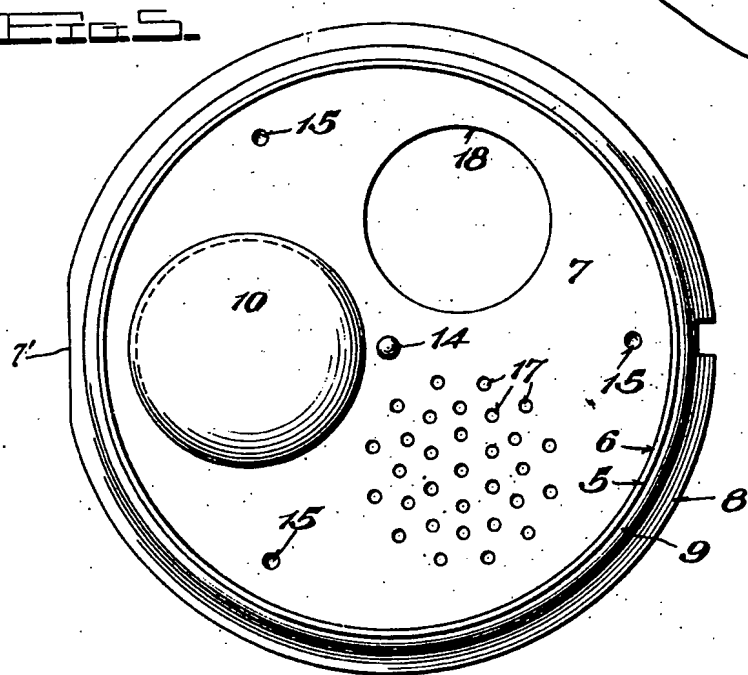
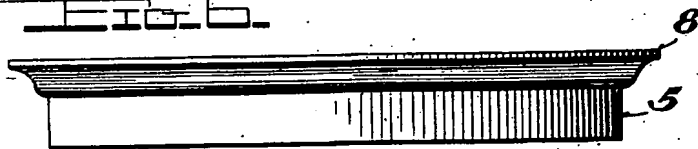


FIG. 5



second compartment.

FIG. 6



Inventors

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